

06cv17217a-PretrialMotionRulings.wpd

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: WELDING FUME PRODUCTS  
LIABILITY LITIGATION**

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: **Case No. 1:03-CV-17000**  
: **(MDL Docket No. 1535)**  
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: **JUDGE O'MALLEY**  
:  
: **MEMORANDUM AND ORDER**

This Court earlier directed the parties to prepare for the possibility of a consolidated trial of five separate cases: (1) *Goforth v. Lincoln Elec. Co.*, case no. 06-CV-17217; (2) *Quinn v. Lincoln Elec. Co.*, case no. 06-CV-17218; (3) *Beheler v. Lincoln Elec. Co.*, case no. 06-CV-17204; (4) *Carriker v. Lincoln Elec. Co.*, case no. 06-CV-17205; and (5) *Steelman v. Lincoln Elec. Co.*, case no. 06-CV-17206. Ultimately, the Court consolidated for trial only the *Goforth* and *Quinn* cases. Various pretrial motions were filed in all five cases, however, as well as on the master docket, and those motions all relate to the two cases consolidated for trial.

On October 25, 2006, the Court held hearings on the record on the pretrial motions filed in all of the above-cited cases, and entered rulings on those motions. This Order documents those rulings. For the reasons and to the extent stated on the record, the Court ruled as follows.<sup>1</sup>

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<sup>1</sup> All denials of motions regarding admissibility of testimony are without prejudice to the parties' right to raise appropriate objections at trial. This Order merely documents the Court's rulings in simplified fashion; the full contours of the Court's rulings were set out on the record during the hearing, and during previous hearings in this MDL.

- Defendants' Motion for Summary Judgment on the Sophisticated User and Learned Intermediary Defense (*Goforth* dkt. 79) is **DENIED**.
- Defendant BOC's and TDY's Motion for Summary Judgment (*Goforth* dkt. 71) is **DENIED**.<sup>2</sup>
- Defendants' Motion to Exclude Evidence Relating to Bogdan Gheorghiu's Opinion Regarding Goforth's PET Scan (*Goforth* dkt. 69) is **DENIED**.
- Defendants' Motion to Exclude Testimony Concerning Certain Tests Performed By Longo (*Beheler* dkt. 19) is **GRANTED in part and DENIED in part, pursuant to agreement of the parties**.
- Defendants' Motion to Preclude William Longo From Testifying Outside the Scope of Matters Disclosed in His Expert Report (*Goforth* dkt. 26) is **GRANTED as unopposed**.
- Defendants' Motion for Partial Summary Judgment against Plaintiff Goforth (*Goforth* dkt. 12) is **DENIED**.
- Defendants' Motion for Summary Judgment on Plaintiffs' Design Defect Claim (*Beheler* dkt. 14) is **GRANTED**.
- Defendants' Motion for Summary Judgment on Fraudulent Misrepresentation, Fraudulent Concealment, and Conspiracy (*Goforth* dkt. 13; *Quinn* dkt. 11, *Beheler* dkt. 22) is **GRANTED**.
- Defendants' Motion for Summary Judgment on Punitive Damages (*Goforth* dkt. 14; *Beheler* dkt. 23) is **DENIED**.
- Plaintiffs' Motion to Strike Testimony of Messick & Limit Testimony of Other Witnesses (master dkt. 1905) is **GRANTED, pursuant to agreement of the parties**.
- Plaintiffs' Motion to Exclude References to Lawyer Advertising (*Goforth* dkt. 20) is **GRANTED, pursuant to agreement of the parties**.
- Plaintiffs' Motion to Strike the Testimony of Randall Thomas (master dkt. 1907) is **GRANTED, pursuant to agreement of the parties**.
- Plaintiffs' Motion Concerning General Matters (*Goforth* dkt. 19) is **GRANTED in part and DENIED in part**.

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<sup>2</sup> Plaintiffs and TDY stipulated on October 30, 2006 that TDY would be dismissed, pursuant to Fed. R. Civ. P. 41.

- Plaintiffs' Motion to Exclude Reference to Other, Dismissed Welding Fume Cases (*Goforth* dkt. 21) is **GRANTED, pursuant to agreement of the parties.**
- Plaintiffs' Motion to Exclude Testimony from Defendants' Experts Concerning Compliance with OSHA and Industry Standards (*Goforth* dkt. 22) is **DENIED.**
- Plaintiffs' Motion to Exclude Testimony from Defendants' Experts Concerning an Employers Legal Duties under OSHA and HazCom (*Goforth* dkt. 23) is **DENIED.**
- Plaintiffs' Motion to Exclude Evidence of Plaintiffs' Own Other Claims (*Goforth* dkt. 24) is **GRANTED in part and DENIED in part.**
- Plaintiffs' Motion to Exclude Reference to the Circumstances of the Death of Roy Quinn (*Quinn* dkt. 14) is **GRANTED as unopposed.**
- Defendants' Motion to Exclude Evidence of Other Duke Power-Related Claims and to Prevent Other Duke Power Plaintiffs From Testifying (*Goforth* dkt. 25) is **GRANTED in part and DENIED in part.**
- Defendants' Motion to Exclude Evidence of Unauthorized Contact Between Their Investigators, and *Goforth* and *Quinn* (*Goforth* dkt. 27) is **GRANTED as unopposed.**
- Plaintiffs Motion for Protection and Sanctions (master dkt. 1894) is **DENIED as moot.**
- Defendants' Motion to Exclude All Mention of Documents Relating to Companies Not Involved in the *Goforth* and *Quinn* Cases (*Goforth* dkt. 29) is **DENIED.**
- Defendants' Motion to Exclude Evidence or Argument Regarding Defendants' Opposition to Plaintiffs' Motion for a Court-Ordered Epi-Study (*Goforth* dkt. 30) is **GRANTED as unopposed.**
- Defendants' Motion to Prohibit Reference to Defendants' Denials to Requests for Admissions (*Goforth* dkt. 31) is **GRANTED as unopposed.**
- Defendants' Motion to Prohibit Reference to Prior Court Orders (*Goforth* dkt. 32) is **GRANTED as unopposed.**
- Defendants' Motion to Exclude Reference to the Court's Order on Defendants' Sanctions Motion (*Goforth* dkt. 33) is **GRANTED as unopposed.**
- Defendants' Motion to Prohibit Reference to *Elam* and Any Other Courts' Orders (*Goforth* dkt. 40) is **GRANTED as unopposed.**

- Defendants' Motion to Prohibit Reference to Steve Quinn (*Goforth* dkt. 39) is **DENIED**.
- Defendants' Motion Regarding Nausieda's Examination of Steve Quinn (*Goforth* dkt. 15; *Quinn* dkt. 12; *Beheler* dkt. 24) is **GRANTED as unopposed**.
- Defendants' Motion Regarding Swash's Examination of Steve Quinn (*Goforth* dkt. 48) is **DENIED**.
- Defendants' Motion to Apply Prior Core Expert Rulings to the "Duke Power Cases" (*Beheler* dkt. 17) is **GRANTED as unopposed**.
- Defendants' Motion to Exclude Testimony of David Burns (*Beheler* dkt. 18) is **GRANTED in part and DENIED in part**.
- Defendants' Motion to Exclude References to Tobacco and Asbestos (*Goforth* dkt. 28) is **GRANTED**.
- Defendants' Motion to Exclude Portion of the Testimony of Richard Lemen (*Beheler* dkt. 20) is **GRANTED as unopposed**.
- Defendants' Motion to Exclude Testimony of Harvey Rosen (*Beheler* dkt. 21; *Goforth* dkt. 49) is **GRANTED, pursuant to agreement of the parties**.
- Defendants' Motion to Strike Plaintiffs' Rebuttal Experts (*Goforth* dkt. 46) is **GRANTED** as to Hoffman and **DENIED** as to Roth, pursuant to agreement of the parties.
- Defendants' Motion to Exclude Michael Hoffman (*Goforth* dkt. 44) is **GRANTED**.
- Defendants' Motion to Exclude Certain Testimony of Robert Cunitz (*Goforth* dkt. 42) is **GRANTED in part and DENIED in part**.<sup>3</sup>
- Defendants' Motion to Exclude Evidence of Other Claims and Other Welding Fume Plaintiffs (*Goforth* dkt. 36) is **GRANTED in part and DENIED in part, pursuant to agreement of the parties**.
- Defendants' Motion to exclude Plaintiffs' Animation (*Goforth* dkt. 35) is **GRANTED in part**.
- Plaintiffs' Objection to the Special Master's Report on Plaintiffs' Documents (master dkt.

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<sup>3</sup> The Court ruled on this issue on the record on October 30, 2006.

1926) is **SUSTAINED in part and OVERRULED in part.**

**IT IS SO ORDERED.**

/s/ Kathleen M. O'Malley  
**KATHLEEN McDONALD O'MALLEY**  
**UNITED STATES DISTRICT JUDGE**

**DATED:** October 30, 2006